



Bill Draft 2019-RBxfz-13: Revenue Laws Tech., Clarifying, and Admin. Changes - Part 2.

2019-2020 General Assembly

Committee:
Introduced by:
Analysis of: 2019-RBxfz-13

Date: March 11, 2020
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OVERVIEW: *Bill Draft 2019-RBxfz-13 makes various technical, administrative, and clarifying changes to the revenue laws. Sections 1.10, 1.11, 2.1, 3.3, and 4.2 are revisions of the sections contained in the bill draft distributed at the February meeting, 2019-BAxfz-18. The remaining sections in the draft are new. The February and March bill drafts will be combined into one draft for final consideration at the April meeting.*

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE:

Section	Explanation	Effective Date
PART I. EXCISE TAX CHANGE		
1.10	Clarifies that a qualified motor vehicle may operate in this State without displaying decals when the motor carrier is operating under a temporary permit issued under G.S. 105-449.19 or under the IFTA Articles of Agreement. The motor carrier must keep a copy of the temporary permit in the vehicle when the vehicle is in this State. <i>This section places the authority to issue temporary IFTA permits under the statute on temporary permits. And it requires any motor carrier operating under a temporary permit to keep a copy of the permit in the motor vehicle.</i>	When it becomes law.
1.11	Provides clarity to the temporary license to import, export, distribute, or transport motor fuel in this State during a disaster response period. The General Assembly enacted legislation allowing the issuance of the temporary permit in S.L. 2019-187. <i>This section removes a reference to the sales tax statutes to avoid confusion, and it clarifies that a request for a temporary license must be made during a state of emergency or disaster declaration.</i>	When it becomes law.
PART II. SALES TAX CHANGES		
2.1	Allows nonprofit and governmental entities to apply for a State and local sales tax refund for sales tax paid on certain digital property, to the same extent as allowed for local school administrative units.	July 1, 2020, and applicable to

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	<p>Nonprofit and governmental entities may apply for a sales tax refund of sales tax paid on tangible personal property and services. Effective October 1, 2019, the General Assembly expanded the taxability of certain digital property. (S.L. 2019-169). That legislation changed the term “tangible personal property and services” to “items” in most instances and defined the term “items” as “tangible personal property, certain digital property, or services.” This change was made for the local sales tax refund allowed to local school administrative units, but it was not changed for the sales tax refund allowed for nonprofit and governmental entities.</p> <p>This section would provide consistency in the applicability of the sales tax refund allowed to nonprofit and governmental entities and local school administrative units.</p> <p><i>The difference between this section, and the one considered at the last meeting, is the use of the defined term “item”, the removal of subsection (b) because no change is necessary, and the effective date.</i></p>	purchases made on or after that date.
2.3	Clarifies that the economic nexus threshold applies only to remote marketplace facilitators. Marketplace facilitators that have a physical presence in North Carolina are required to collect and remit sales tax on the first dollar of sales sourced to this State.	July 1, 2020, and applicable to sales occurring on or after that date.
2.4	Clarifies that a digital code is taxed in the same manner as the certain digital property for which the digital code relates.	When law it becomes law.
2.5	<p>Requires marketplace facilitators who transact retail sales of prepared food and beverage to collect and remit local meals tax to the taxing city or county and codifies into the General Statutes the existing definition of "prepared food and beverages" used by the five localities with a meals tax.</p> <p>Last year, the General Assembly enacted marketplace facilitator language requiring entities that facilitate sales for third party sellers to collect and remit sales tax. There are two types of transactions where an additional local tax applies: the rental of accommodations and the sale of prepared food and beverages. The rental of accommodations is subject to sales and use tax as well as local occupancy tax. The sale of prepared food and beverages is subject to sales and use tax and local meals tax. A marketplace facilitator is required to collect and remit both types of taxes because they are deemed the "retailer" for these transactions.</p> <p>The General Assembly initially addressed accommodation facilitators in 2010 and added corresponding language to the "Uniform provisions for room occupancy taxes" statute stating that, to the extent a retailer is required to remit sales tax on accommodations to the Department of Revenue, the retailer must also remit local occupancy tax on that transaction to the taxing city or county, as applicable.</p>	July 1, 2020, and applicable to sales occurring on or after that date.

	Similar language is needed to require marketplace facilitators that transact sales of prepared food and beverage to collect and remit local meals tax. This requirement will apply only in the localities that levy a meals tax, which are: Dare County, Wake County, Mecklenburg County, Cumberland County, and the Town of Hillsborough. Examples of marketplace facilitators that might be impacted would be Grub Hub, Uber Eats, Door Dash, and Postmates.	
PART III. PERSONAL INCOME TAX CHANGES		
3.3	<p>Codifies an existing Departmental practice. A nonresident partner that is not an individual may execute a nonresident partner affirmation to affirm that the nonresident partner will timely file a separate income tax return and report the partner's share of the partnership income to North Carolina. The statute does not give a due date for the affirmation to be filed. The Secretary has published guidance to taxpayers that requires the affirmation to be filed by the due date of the original return. (<i>See North Carolina Personal Taxes Bulletins, Nonresident Partners</i>)</p> <p><i>The change between this section and the one considered at the last meeting is the use of the word "affirmation" instead of the phrase "nonresident partner affirmation" so that the term is used consistently throughout the statute.</i></p>	When it becomes law.
PART IV. CORPORATE TAX CHANGES		
4.2	<p>Clarifies that the amount of receipts sourced to NC for a wholesale content distributor may not be less than 2% of the receipts received from advertising and licensing.</p> <p>Subsection (a) replaces the term "income apportioned" with the more appropriate term "receipts sourced". Subsection (b) removes the reference to this floor in the franchise tax statute because the general law is sufficient. The general law provides that a company subject to income tax in this State must apportion its net worth by using the fraction it applies in apportioning its income to the State.</p> <p><i>This section rewrites the language from the bill presented last month based upon discussions between legislative staff, interested parties, and the Department of Revenue.</i></p>	Taxable years beginning on or after January 1, 2020.
4.4	Prevents refunds based on a proposed adjustment for intercompany transactions to be issued prior to the resolution of the corresponding proposed assessment, and the loss of the statute of limitations for the refund to be adjusted consistent with the settlement of the assessment amount.	When it becomes law.
4.5	Repeals obsolete tax provision. The federal Tax Cut and Jobs Act of 2017 imposed the unrelated business income tax on certain	When it becomes law.

	transportation fringe benefits, including parking, provided by nonprofit organizations to their employees. North Carolina enacted this exclusion to ensure the expenses would not be taxable for State tax purposes. The Taxpayer Certainty and Disaster Relief Act of 2019 repealed the federal tax provision retroactively. The provision is no longer needed.	
PART V: TAX ENFORCEMENT AND ADMINISTRATIVE CHANGES		
5.1	Adds the responsibility and subject-matter jurisdiction to enforce violations and criminal offenses concerning taxpayer information security to the Department's Criminal Investigations Division.	When it becomes law.
5.2	Provides that there is no statute of limitations applicable to a tax assessment for trust taxes collected but not remitted to the State. Trust taxes include sales and use tax and income tax withholdings. Under current law, the Department cannot assess a taxpayer for any tax collected but not remitted beyond three years unless the Department can prove the taxpayer "attempted in any manner to fraudulently evade or defeat the tax" and fraud is difficult to prove.	When it becomes law.
5.3	<p>Distinguishes between the criminal and civil liability of a responsible person in a business entity. G.S. 105-242.2 provides that each responsible person in a business entity is personally and individually liable for the principal amount of taxes owed by the business entity. G.S. 105-236.1 provides that certain offenses, such as embezzlement of funds, identity theft, and forgery, are crimes under the jurisdiction of the Department. This section clarifies that the civil tax liability statute has no applicability to the criminal liability of a person.</p> <p>In the past, criminal defendants have argued that the civil liability statute is a bar to a criminal prosecution for a crime. An example of how a defendant would use the statute is as follows: An employee of a company filed fraudulent returns and aided and abetted the business in embezzling sales tax. The employee's attorney would argue the employee is not an officer, not subject to 105-242.2, and therefore cannot be prosecuted for the crimes. The Department instead focuses on the employee's conduct and whether it violates the criminal provisions.</p>	When it becomes law.
5.4	<p>Conforms the definition of an overdue tax debt to the changes made last session in S.L. 2019-169, and changes the effective date of the provision enacted last session so that the conforming change made in subsection (a) of this section and the changes made last session become effective at the same time.</p> <p>For purposes of collections, there is a tax debt and an overdue tax debt. A tax debt is the amount of tax, penalty, and interest collectible under G.S. 105-241.22. A tax debt that remains unpaid for 90 days</p>	August 1, 2020, and applies to tax debts collectible on or after that date.

	<p>becomes an overdue tax debt, and a 20% collection assistance fee is added to the total amount collectible. The proceeds of the fee are Departmental receipts and are applied to the cost of collecting and reducing the incidence of overdue tax debts.</p> <p>Prior to the change made last session, the Department had to send a 30-day fee notice, and the notice could not be mailed until at least 60 days after the tax debt remained unpaid; this timeline coincided with the definition of an overdue tax debt, which is a tax debt that remained unpaid for 90 days. S.L. 2019-169 removed the requirement that the fee notice be sent 30 days after the tax debt remained unpaid, thereby allowing it to be sent with the notice of final assessment. And it allowed the fee to be imposed 60 days after the tax debt became collectible, rather than 90 days. However, the changes made last session did not change the definition of an overdue tax debt. This section provides internal consistency within the statute to accomplish the change intended last session.</p>	
5.5	<p>Removes the Department of Revenue from the new licensing procedures, data collection, and reporting requirements for State agencies that issue licenses. S.L. 2019-91 made changes to the occupational licensing laws that appear to clarify standards for a licensing board's use of an applicant's criminal history in making licensing determinations.</p>	<p>When it becomes law.</p>
PART VI. EFFECTIVE DATES		
6	<p>Except as otherwise provided, this act is effective when it becomes law.</p>	